

## Message Text

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ACTION L-03

INFO OCT-01 NEA-10 ISO-00 IO-13 SSO-00 NSCE-00 USIE-00

INRE-00 FEA-01 ACDA-07 AGRE-00 AID-05 CEA-01

CEQ-01 CG-00 CIAE-00 EPG-02 COME-00 DLOS-09

DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01

TRSE-00 H-01 INR-07 INT-05 JUSE-00 NSAE-00 NSC-05

NSF-01 OES-07 OMB-01 PA-01 PM-04 PRS-01 SP-02

SS-15 FPC-01 STR-04 /122 W

-----061146Z 081775 /43

O 061010Z JUN 77

FM AMEMBASSY TUNIS

TO SECSTATE WASHDC IMMEDIATE 7005

INFO AMEMBASSY TRIPOLI IMMEDIATE

C O N F I D E N T I A L TUNIS 3941

E.O. 11652: GDS

TAGS: PFOR, PLOS, ENRG, TS, LY

SUBJECT: TUNISIAN/LIBYAN DISPUTE OVER CONTINENTAL SHELF:

GOT TO RETAIN NORTHCUTT ELY.

1. SUMMARY: AS ANTICIPATED IN HIS JUNE 3 CONVERSATION WITH AMBASSADOR MULCAHY, NORTHCUTT ELY TOLD ME JUNE 5 THAT HIS LAW FIRM WILL BE RETAINED BY ETAP (STATE OIL COMPANY) AND GOT IN MATTER OF TUNISIAN-LIBYAN OFF-SHORE BOUNDARY DISPUTE. SIX MONTH RETAINER RESULTS FROM EXTENSIVE TALKS JUNE 3-5 BETWEEN ELY AND ASSOCIATE ROBERT F. PIETROWSKI AND ACTING FOREIGN MINISTER BRAHIM TURKI, ETAP, AND OTHER GOT OFFICIALS. ELY EXPECTS TUNISIAN REQUEST WITHIN TEN DAYS TO INTERNATIONAL COURT OF JUSTICE (ICJ) TO ACCEPT JURISDICTION IN BOUNDARY DISPUTE AND TO GRANT INTERIM ORDER FOR READING AND BATES TO CEASE ACTIVITIES IN AREA. ELY ALSO URGING GOT TO FILE ACTION THIS WEEK IN US FEDERAL COURT FOR RESTRAINING ORDER AND TO PRESS CASE BEFORE UN SECURITY COUNCIL. ETAP PRESIDENT ROUROU PROVIDED COORDINATES AND ESTIMATED COMPLETION TIME FOR "J.W. BATES" WELL. (SEPTTEL) ELY OR  
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ASSOCIATES EXPECT TO CONTACT DEPARTMENT EARLY IN WEEK SEEKING TEXTS OF VELIOTES AND HABIB LETTERS. END SUMMARY.

2. RETURNING TO WASHINGTON JUNE 5, ELY LEFT DRAFT CONTRACT FOR SIGNATURE BY WHICH GOT WOULD RETAIN FOR ALL PHASES OF

BOUNDARY DISPUTE BUT WITH PROFESSOR R.Y. JENNINGS OF CAMBRIDGE UNIVERSITY REMAINING AS LEAD COUNSEL FOR ACTION BEFORE ICJ. APART FROM SUPPORTING JENNINGS, CONTRACT PROVIDES FOR ADVICE TO ETAP AND GOT, LITIGATION IN US COURT AGAINST READING AND BATES AS CREATING THREAT TO PEACE OF TUNISIA, AND ENDANGERING ITS PROPERTY RIGHTS. ALSO, IF REQUESTED BY GOT, PROVIDES FOR PARTICIPATION IN NEGOTIATIONS WITH LIBYA.

3. ELY SAID THAT ACTING FOREIGN MINISTER BRAHIM TURKI STRESSED TO HIM THAT GOT WANTS AMICABLE SETTLEMENT BASED EITHER ON NEGOTIATION OR THIRD PARTY DETERMINATION. MEANWHILE, IT INSISTS THAT THERE BE NO DRILLING UNTIL THE BOUNDARY IS DECIDED. TURKI INDICATED HE WAS DETERMINED TO PROCEED WITH ICJ LITIGATION. HOWEVER, WHEN ELY URGED GOT PROCEED WITH CONVENING OF UN SECURITY COUNCIL, TURKI TOLD HIM THAT GOT HAD TO HOLD OFF UNTIL IT HAD GONE TO ARAB LEAGUE. (SEE SEPARATE TELEGRAM).

4. ELY SAID REQUEST TO ICJ TO ACCEPT JURISDICTION IN BOUNDARY DISPUTE AND TAKE "INTERIM MEASURES" TO STOP DRILLING SHOULD BE READY WITHIN WEEK AND ALL GOT OFFICIALS APPEARED TO FAVOR PROCEEDING WITH THIS ACTION, AS WELL AS UNSPECIFIED LITIGATION IN TUNISIAN COURTS. ELY SAID HE SHARED LAW FACULTY DEAN BELAID'S HOPE THAT ICJ WOULD ACCEPT JURISDICTION ON THE BASIS OF THE AUGUST 1976 JOINT TUNISIAN/LIBYAN COMMUNIQUE. ELY SAID, HOWEVER, THAT ICJ ACTION WOULD TAKE SOME TIME AND, IN ORDER TO HALT DRILLING BY "J.W. BATES", HE BELIEVED IT URGENT THAT GOT TAKE ACTION IN US COURTS, PREFERABLY IN SUPREME COURT UNDER ARTICLE III CLAUSE 2 OF THE CONSTITUTION, WITH AMBASSADOR HEDDA AS COMPLAINANT. HEDDA WOULD SEEK COURT INJUNCTION PROHIBITING ALL FURTHER

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DRILLING, ETC., BY READING AND BATES AND, MEANWHILE, TEMPORARY RESTRAINING ORDER TO THIS EFFECT. APPARENTLY GOT IS OF MIXED VIEWS REGARDING ACTION IN US COURTS. SOME HESITATE BECAUSE OF CONCERN OVER COUNTERSUIT AND BOND WHICH COURT LIKELY WOULD REQUIRE BEFORE ISSUING TEMPORARY RESTRAINING ORDER. (AT WORST, BONDING PROCEDURE MIGHT RUN RISK OF GOT'S BECOMING GUARANTOR FOR COSTS OF "J.W. BATES"\*)

5. PIETROWSKI GAVE ME PRELIMINARY DRAFT OF COMPLAINT TO BE FILED IN US COURTS. HE INDICATED THAT WHILE COMPLAINT FRAMED IN TERMS OF SUPREME COURT ACTION, IT MIGHT INSTEAD BE FILED IN A FEDERAL DISTRICT COURT (IN DISTRICT OF COLUMBIA, TEXAS, OR OKLAHOMA), PROBABLY IN NAME OF ETAP. IF FEDERAL COURTS WOULD NOT ACCEPT JURISDICTION, SUIT INTO TEXAS OR OKLAHOMA COURTS WOULD BE CONTEMPLATED. PIETROWSKI SAID GROUNDS FOR ACTION AGAINST READING AND BATES WOULD ESSENTIALLY BE ON THREE LEVELS, MOVING FROM VIOLATION OF INTERNATIONAL LAW (THREAT TO PEACE OF FRIENDLY NATION) DOWN TO PROTECTION OF POTENTIAL PROPERTY INTEREST SHOULD ICJ MAKE BOUNDARY DETERMINATION FAVORABLE TO TUNISIA.

6. PIETROWSKI SAID ELY SAID THEY HAD AGREED AS INTIAL TUNISIAN POSITION IN ICJ BOUNDARY CASE TO PRESS FOR PROLONGATION LINE (AS DISCUSSED BY HELAID WITH HODGSON) AS BOUNDARY. HOWEVER, THEY SUGGESTED EVENTUAL SETTLEMENT MIGHT WELL BE BASED ON LINE III AS DESCRIBED IN EARLIER ELY BRIEF.

NOTE: LAWYERS EMPHASIZED THAT THEY WISH ALL ASPECTS OF THEIR LEGAL BRIEF TO BE PROTECTED FROM FOREIGN GOVERNMENTS, EXCEPTING OF COURSE GOT, WHICH ARE AWARE THAT THEY ARE IN TOUCH WITH EMBASSY AND DEPARTMENT.

7 IN ADDITION TO UNDER SECRETARY (THEN ACTING FOREIGN MINISTER) TURKI, THOSE ENGAGED IN TALKS WITH ELY AND PIETROWSKI WERE: PRESIDENT AMOR ROUROU AND EXPLORATION DIRECTOR LAZREG OF ETAP; AMBASSADOR SLIM BEN GHAZI, LAW FACULTY DEAN SADOK BELAID, ENERGY DIRECTOR KHALIFA KAROUI, MINES BUREAU PRESIDENT MEKKI ZADI AND MAHMOUD LADJIMI, ENERGY ADVISOR TO GOT. ELY NOTED CONFIDENTIAL

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THAT APART FROM AMBASSADOR HEDDA, SECOND SECRETARY BENYOUMIS SEEMED THE MOST DIRECTLY INVOLVED TUNISIAN IN EMBASSY WASHINGTON.

8. ELY AND PEITROWSKI RETURNING TO WASHINGTON JUNE 5, SAID THEY OR THEIR ASSOCIATE FREDERICK H. RITTS EXPECTED TO BE IN TOUCH WITH THE DEPARTMENT - NEA/AFN AND L - EARLY IN WEEK. AMONG OTHER THINGS THEY WILL INQUIRE WHETHER DEPARTMENT CAN MAKE AVAILABLE TEXT OF VELIOTES AND/OR HABIB LETTERS WHICH THEY SAY WOULD FACILITATE WCPEDITIOUS HANDLING OF PROPOSED ACTION IN US COURT. MONTGOMERY

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